

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) No.97/7/HDB/2022

Petition under Section 7 of IBC, 2016 R/w Rule 4 of IBBI (AAA)
Rules, 2016

IN THE MATTER OF M/S BIO GREEN PAPERS LIMITED

Between

Katepalli Venkateswara Rao
6-3-1069, 1089/A, Flat No. 201
Narvens Vaishno Sudam Gulmohar Avenue
Near Villa Marie College, Rajbhavan Road
Somajiguda Erramanzil , Hyderabad – 500082

FREE OF COST COPY

...Petitioner

Versus

M/s Bio Green Papers Limited
Plot No. 409, 1st Floor, Sai Krupa Market
Hyderabad – 500036

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

...Respondent

Date of order: 30.05.2023

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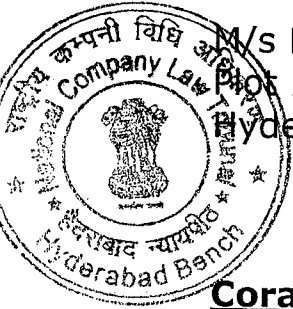
Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member
(Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Petitioner: Shri Amir Bavani, along with Shri Harsh
Chowdhary, Advocates

For the Respondent: Shri D. Gopala Krishna and Shri J. Basava
Raju, Advocates



PER: BENCH

ORDER

1. This is a Petition filed under Section 7 of *Insolvency, and Bankruptcy Code (hereinafter to be referred as "Code")*, read with *Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*, seeking initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium against the corporate debtor and to appoint an Interim Resolution Professional, as prescribed under the Code and Rules thereon, alleging that the Respondent defaulted in the payment of debt of Rs. 1,64,65,891/- (*Rupees One Crore Sixty Four Lakhs Sixty Five Thousand Eight Hundred and Ninety One only*) which includes Principal and interest.



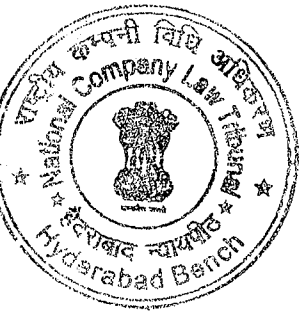
2. The averments in the Petition is that the Petitioner/Financial Creditor is into the business of rendering the Financial Services and the Corporate Debtor is into manufacturing and dealers in pulp Board and paper of all kinds. During the course of its business, the

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Corporate Debtor has entered into a Memorandum of Understanding dated 02.04.2018 for allotment of shares in the form of convertible/redeemable preference shares in Corporate Debtor and accordingly the Petitioner had invested an amount of Rs. 1,00,00,000/- (Rs. One Crore only). However, the Corporate Debtor not only failed to allot the shares but also failed to repay the invested money along with 18% interest from the date of investment.

3. Thus submitting, prayed the Tribunal to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
4. The Corporate Debtor filed counter wherein the Corporate Debtor has admitted that the Financial Creditor had approached the Corporate Debtor through one Mr. Aveena Gudapati for allotment of Convertible/Redeemable preference shares in the Corporate Debtor Company but the same was allotted to the Financial Creditor by the Corporate Debtor.
5. It is further admitted by the Corporate Debtor that there has been an oral understanding between the parties in



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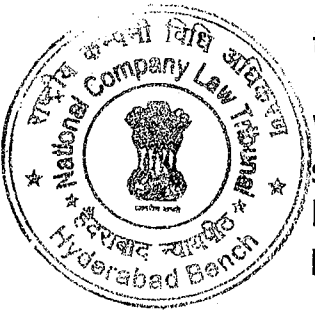
June 2021 to pay the money in 12 quarterly instalments and further the Financial Creditor has agreed to waive the interest. In terms of the oral understanding, the instant petition has been filed.

6. It is further stated that the Corporate Debtor has sought further time from the Financial Creditor in order to clear its dues and the Financial Creditor has orally agreed to grant some more time for repayment of the amount. Despite the understanding, the present petition is filed by the Financial Creditor with an ulterior motive to recover the amount which is against the object of the Code. Thus submitting, prayed the Tribunal to reject the same.

7. In the light of the contest as aforementioned the points that emerge for consideration by this Tribunal are:

Whether a financial debt as claimed by the Petitioner of a sum over rupees one crore is due and payable by the Respondent, if so, whether the Respondent defaulted in payment of the same?

8. We have heard the Learned Counsel Shri Amir Bavani and Shri Harsh Chowdhary for the Financial Creditor and Shri D. Gopala Krishna and Shri J. Basava Raju, Advocates



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representing the Corporate Debtor. Perused the record and written submissions.

Point

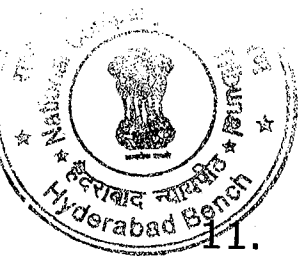
Whether a financial debt as claimed by the Petitioner of a sum over rupees one crore is due and payable by the Respondent, if so, whether the Respondent defaulted in payment of the same?

9. It is the case of the Petitioner that the Petitioner and the Respondent, that on 02.04.2018 have entered into a Memorandum of Understanding (MOU) whereunder it was agreed by the corporate debtor that it would allot the shares in the Corporate Debtor in consideration of the Petitioner bringing Rs. 100 lakhs in the form of convertible/redeemable preference shares with in a period of maximum one year from the date of payment of the same to Corporate Debtor, and the said sum will be used for the purpose of the revival and rehabilitation of machinery and working capital needs of the Corporate Debtor Unit. The MOU further states that in the event if Corporate Debtor fails to allot shares in the form of



convertible/redeemable preference shares, the Corporate Debtor will repay the amounts paid by the Petitioner along with interest @ 18% per annum. A copy of the MOU dated 02.04.2018 has been filed.

10. According to the Petitioner, the amount of Rs. 1 crore agreed to be invested under the MOU dated 02.04.2018 has been paid in between 25.04.2018 and 09.08.2018. In support of his plea, the Financial Creditor filed the ledger account of the Corporate Debtor and contended that having thus paid the money, the Corporate Debtor failed to allot the shares in the form of convertible/redeemable preference shares to the Petitioner, as such the Financial Creditor demanded return of the amount with interest @ 18%. However, as the same is not complied with, the present petition is filed. The Petitioner has filed the photocopy of the Annual report of the Corporate Debtor.



11. The Corporate Debtor in its counter has stated that the Financial Creditor had approached the Corporate Debtor through one Mr. Aveena

Gudapati for allotment of shares in the form of convertible/redeemable preference shares in Corporate Debtor, however, the same could not allotted to the Petitioner by the Corporate Debtor. Therefore, an oral understanding between the parties to pay the said amount in 12 quarterly instalments without interest has been agreed between the parties in June 2021. Contrary to the oral understanding, the present petition is filed. Thus, virtually accepting that the Corporate Debtor owed money to the Financial Creditor herein.

12. In the above backdrop, it is overwhelmingly clear that a sum of Rs. one crore has been deposited by the Petitioner with the Corporate Debtor even though towards purchase of shares as the shares were not allotted, it was agreed by the corporate debtor to refund the said amount in 12 quarterly instalments without interest. Therefore, the allotment money has been converted into a debt by the parties as is evident from the contest put forth before us. Since the said debt is not repaid the default in repayment of the same stands established. Therefore, as existence of debt and its



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default has been established the petition is liable to be allowed. We also find that the petition is in order. Hence, we here by admit the company Petition.

Point is answered accordingly.

13. It is pertinent to mention herein that earlier this Tribunal disposed of IA No.453/2022, an application filed by third party seeking to implead in the present Petition on the ground that the present petition is collusive. Needless to mention that the initiation of Corporate Insolvency Resolution Process under Section 7 or 9 of IBC can be questioned in terms of Section 65 of IBC by any person. Therefore, this order of ours admitting the Corporate Debtor into CIRP does not preclude the Applicant in IA 453/2022 to challenge this order, if so advised, in accordance with the provisions of IBC.

Accordingly, the Petition is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, against the corporate debtor



which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

14.1 The Petitioner has proposed the name of Mr. Machar Rao Meenavalli. Accordingly, this Tribunal appoints Mr. Machar Rao Meenavalli, having IBBI Regn. No. IBBI/IPA-001/IP-P00891/2017-2018/11488, #R/o H.No: 7-1-636/24A, Model Colony, Near E.S.I. Hospital, Erragadda, Hyderabad, West Marredpally, Telangana, 500038, email id: mmrao.ca@gmail.com as the Interim Resolution Professional. The IRP is directed to file Authorization for Assignment within three days from the date of this order.

14.2 The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.



14.3 We direct the Petitioner to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) towards the advance fee of the IRP and expenses towards the CIRP, which shall be ratified later on by the Committee of Creditors.

14.4 Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:

- i. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;*
- ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
- iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

14.5. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

14.6. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2016. The Directors, Promoters or any other person associated with the management of



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Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the Code, 2016.

- 14.7 The Petitioner as well as the Registry are directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.
- 14.8 The Registry is directed to communicate this Order to the Petitioner and the Corporate Debtor.
- 14.9 The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

Accordingly, this Petition CP (IB) NO 97/7/HDB OF 2022 is allowed and admitted.



(Charan Singh)
Member (Technical)

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30/5/23

(Dr. Venkata Ramakrishna Badarinath Nandula)
Member (Judicial)

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08/6/2023

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench..

प्रमाणित प्रति
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केस संख्या
CASE NUMBER.....CP (IB) No. 97/7/HDB/22
निर्णय का तारीख
DATE OF JUDGEMENT.....30/5/23
प्रति तैयार किया गया तारीख
COPY MADE READY ON.....8/6/23